

108TH CONGRESS
1ST SESSION

S. 1435

AN ACT

To provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Prison Rape Elimination Act of 2003”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purposes.
- Sec. 4. National prison rape statistics, data, and research.
- Sec. 5. Prison rape prevention and prosecution.
- Sec. 6. Grants to protect inmates and safeguard communities.
- Sec. 7. National Prison Rape Reduction Commission.
- Sec. 8. Adoption and effect of national standards.
- Sec. 9. Requirement that accreditation organizations adopt accreditation standards.
- Sec. 10. Definitions.

3 **SEC. 2. FINDINGS.**

4 Congress makes the following findings:

5 (1) 2,100,146 persons were incarcerated in the
 6 United States at the end of 2001: 1,324,465 in Fed-
 7 eral and State prisons and 631,240 in county and
 8 local jails. In 1999, there were more than
 9 10,000,000 separate admissions to and discharges
 10 from prisons and jails.

11 (2) Insufficient research has been conducted
 12 and insufficient data reported on the extent of pris-
 13 on rape. However, experts have conservatively esti-
 14 mated that at least 13 percent of the inmates in the
 15 United States have been sexually assaulted in pris-
 16 on. Many inmates have suffered repeated assaults.
 17 Under this estimate, nearly 200,000 inmates now in-
 18 carcerated have been or will be the victims of prison
 19 rape. The total number of inmates who have been

1 sexually assaulted in the past 20 years likely exceeds
2 1,000,000.

3 (3) Inmates with mental illness are at increased
4 risk of sexual victimization. America's jails and pris-
5 ons house more mentally ill individuals than all of
6 the Nation's psychiatric hospitals combined. As
7 many as 16 percent of inmates in state prisons and
8 jails, and 7 percent of Federal inmates, suffer from
9 mental illness.

10 (4) Young first-time offenders are at increased
11 risk of sexual victimization. Juveniles are 5 times
12 more likely to be sexually assaulted in adult rather
13 than juvenile facilities—often within the first 48
14 hours of incarceration.

15 (5) Most prison staff are not adequately trained
16 or prepared to prevent, report, or treat inmate sex-
17 ual assaults.

18 (6) Prison rape often goes unreported, and in-
19 mate victims often receive inadequate treatment for
20 the severe physical and psychological effects of sex-
21 ual assault—if they receive treatment at all.

22 (7) HIV and AIDS are major public health
23 problems within America's correctional facilities. In
24 2000, 25,088 inmates in Federal and State prisons
25 were known to be infected with HIV/AIDS. In 2000,

1 HIV/AIDS accounted for more than 6 percent of all
2 deaths in Federal and State prisons. Infection rates
3 for other sexually transmitted diseases, tuberculosis,
4 and hepatitis B and C are also far greater for pris-
5 oners than for the American population as a whole.
6 Prison rape undermines the public health by contrib-
7 uting to the spread of these diseases, and often giv-
8 ing a potential death sentence to its victims.

9 (8) Prison rape endangers the public safety by
10 making brutalized inmates more likely to commit
11 crimes when they are released—as 600,000 inmates
12 are each year.

13 (9) The frequently interracial character of pris-
14 on sexual assaults significantly exacerbates inter-
15 racial tensions, both within prison and, upon release
16 of perpetrators and victims from prison, in the com-
17 munity at large.

18 (10) Prison rape increases the level of homi-
19 cides and other violence against inmates and staff,
20 and the risk of insurrections and riots.

21 (11) Victims of prison rape suffer severe phys-
22 ical and psychological effects that hinder their ability
23 to integrate into the community and maintain stable
24 employment upon their release from prison. They

1 are thus more likely to become homeless and/or re-
2 quire government assistance.

3 (12) Members of the public and government of-
4 ficials are largely unaware of the epidemic character
5 of prison rape and the day-to-day horror experienced
6 by victimized inmates.

7 (13) The high incidence of sexual assault within
8 prisons involves actual and potential violations of the
9 United States Constitution. In *Farmer v. Brennan*,
10 511 U.S. 825 (1994), the Supreme Court ruled that
11 deliberate indifference to the substantial risk of sex-
12 ual assault violates prisoners' rights under the Cruel
13 and Unusual Punishments Clause of the Eighth
14 Amendment. The Eighth Amendment rights of State
15 and local prisoners are protected through the Due
16 Process Clause of the Fourteenth Amendment. Pur-
17 suant to the power of Congress under Section Five
18 of the Fourteenth Amendment, Congress may take
19 action to enforce those rights in States where offi-
20 cials have demonstrated such indifference. States
21 that do not take basic steps to abate prison rape by
22 adopting standards that do not generate significant
23 additional expenditures demonstrate such indiffer-
24 ence. Therefore, such States are not entitled to the
25 same level of Federal benefits as other States.

1 (14) The high incidence of prison rape under-
2 mines the effectiveness and efficiency of United
3 States Government expenditures through grant pro-
4 grams such as those dealing with health care; men-
5 tal health care; disease prevention; crime prevention,
6 investigation, and prosecution; prison construction,
7 maintenance, and operation; race relations; poverty;
8 unemployment and homelessness. The effectiveness
9 and efficiency of these Federally funded grant pro-
10 grams are compromised by the failure of State offi-
11 cials to adopt policies and procedure that reduce the
12 incidence of prison rape in that the high incidence
13 of prison rape—

14 (A) increases the costs incurred by Fed-
15 eral, State, and local jurisdictions to administer
16 their prison systems;

17 (B) increases the levels of violence, di-
18 rected at inmates and at staff, within prisons;

19 (C) increases health care expenditures,
20 both inside and outside of prison systems, and
21 reduces the effectiveness of disease prevention
22 programs by substantially increasing the inci-
23 dence and spread of HIV, AIDS, tuberculosis,
24 hepatitis B and C, and other diseases;

1 (D) increases mental health care expendi-
 2 tures, both inside and outside of prison sys-
 3 tems, by substantially increasing the rate of
 4 post-traumatic stress disorder, depression, sui-
 5 cide, and the exacerbation of existing mental ill-
 6 nesses among current and former inmates;

7 (E) increases the risks of recidivism, civil
 8 strife, and violent crime by individuals who have
 9 been brutalized by prison rape; and

10 (F) increases the level of interracial ten-
 11 sions and strife within prisons and, upon re-
 12 lease of perpetrators and victims, in the com-
 13 munity at large.

14 (15) The high incidence of prison rape has a
 15 significant effect on interstate commerce because it
 16 increases substantially—

17 (A) the costs incurred by Federal, State,
 18 and local jurisdictions to administer their pris-
 19 on systems;

20 (B) the incidence and spread of HIV,
 21 AIDS, tuberculosis, hepatitis B and C, and
 22 other diseases, contributing to increased health
 23 and medical expenditures throughout the Na-
 24 tion;

1 (C) the rate of post-traumatic stress dis-
2 order, depression, suicide, and the exacerbation
3 of existing mental illnesses among current and
4 former inmates, contributing to increased
5 health and medical expenditures throughout the
6 Nation; and

7 (D) the risk of recidivism, civil strife, and
8 violent crime by individuals who have been bru-
9 talized by prison rape.

10 **SEC. 3. PURPOSES.**

11 The purposes of this Act are to—

12 (1) establish a zero-tolerance standard for the
13 incidence of prison rape in prisons in the United
14 States;

15 (2) make the prevention of prison rape a top
16 priority in each prison system;

17 (3) develop and implement national standards
18 for the detection, prevention, reduction, and punish-
19 ment of prison rape;

20 (4) increase the available data and information
21 on the incidence of prison rape, consequently im-
22 proving the management and administration of cor-
23 rectional facilities;

24 (5) standardize the definitions used for col-
25 lecting data on the incidence of prison rape;

1 (6) increase the accountability of prison officials
2 who fail to detect, prevent, reduce, and punish pris-
3 on rape;

4 (7) protect the Eighth Amendment rights of
5 Federal, State, and local prisoners;

6 (8) increase the efficiency and effectiveness of
7 Federal expenditures through grant programs such
8 as those dealing with health care; mental health
9 care; disease prevention; crime prevention, investiga-
10 tion, and prosecution; prison construction, mainte-
11 nance, and operation; race relations; poverty; unem-
12 ployment; and homelessness; and

13 (9) reduce the costs that prison rape imposes
14 on interstate commerce.

15 **SEC. 4. NATIONAL PRISON RAPE STATISTICS, DATA, AND**
16 **RESEARCH.**

17 (a) ANNUAL COMPREHENSIVE STATISTICAL RE-
18 VIEW.—

19 (1) IN GENERAL.—The Bureau of Justice Sta-
20 tistics of the Department of Justice (in this section
21 referred to as the “Bureau”) shall carry out, for
22 each calendar year, a comprehensive statistical re-
23 view and analysis of the incidence and effects of
24 prison rape. The statistical review and analysis shall

1 include, but not be limited to the identification of
 2 the common characteristics of—

3 (A) both victims and perpetrators of prison
 4 rape; and

5 (B) prisons and prison systems with a high
 6 incidence of prison rape.

7 (2) CONSIDERATIONS.—In carrying out para-
 8 graph (1), the Bureau shall consider—

9 (A) how rape should be defined for the
 10 purposes of the statistical review and analysis;

11 (B) how the Bureau should collect infor-
 12 mation about staff-on-inmate sexual assault;

13 (C) how the Bureau should collect informa-
 14 tion beyond inmate self-reports of prison rape;

15 (D) how the Bureau should adjust the data
 16 in order to account for differences among pris-
 17 ons as required by subsection (c)(3);

18 (E) the categorization of prisons as re-
 19 quired by subsection (c)(4); and

20 (F) whether a preliminary study of prison
 21 rape should be conducted to inform the method-
 22 ology of the comprehensive statistical review.

23 (3) SOLICITATION OF VIEWS.—The Bureau of
 24 Justice Statistics shall solicit views from representa-
 25 tives of the following: State departments of correc-

1 tion; county and municipal jails; juvenile correctional
2 facilities; former inmates; victim advocates; research-
3 ers; and other experts in the area of sexual assault.

4 (4) SAMPLING TECHNIQUES.—The review and
5 analysis under paragraph (1) shall be based on a
6 random sample, or other scientifically appropriate
7 sample, of not less than 10 percent of all Federal,
8 State, and county prisons, and a representative sam-
9 ple of municipal prisons. The selection shall include
10 at least one prison from each State. The selection of
11 facilities for sampling shall be made at the latest
12 practicable date prior to conducting the surveys and
13 shall not be disclosed to any facility or prison system
14 official prior to the time period studied in the sur-
15 vey. Selection of a facility for sampling during any
16 year shall not preclude its selection for sampling in
17 any subsequent year.

18 (5) SURVEYS.—In carrying out the review and
19 analysis under paragraph (1), the Bureau shall, in
20 addition to such other methods as the Bureau con-
21 siders appropriate, use surveys and other statistical
22 studies of current and former inmates from a sample
23 of Federal, State, county, and municipal prisons.
24 The Bureau shall ensure the confidentiality of each
25 survey participant.

1 (6) PARTICIPATION IN SURVEY.—Federal,
 2 State, or local officials or facility administrators that
 3 receive a request from the Bureau under subsection
 4 (a)(4) or (5) will be required to participate in the
 5 national survey and provide access to any inmates
 6 under their legal custody.

7 (b) REVIEW PANEL ON PRISON RAPE.—

8 (1) ESTABLISHMENT.—To assist the Bureau in
 9 carrying out the review and analysis under sub-
 10 section (a), there is established, within the Depart-
 11 ment of Justice, the Review Panel on Prison Rape
 12 (in this section referred to as the “Panel”).

13 (2) MEMBERSHIP.—

14 (A) COMPOSITION.—The Panel shall be
 15 composed of 3 members, each of whom shall be
 16 appointed by the Attorney General, in consulta-
 17 tion with the Secretary of Health and Human
 18 Services.

19 (B) QUALIFICATIONS.—Members of the
 20 Panel shall be selected from among individuals
 21 with knowledge or expertise in matters to be
 22 studied by the Panel.

23 (3) PUBLIC HEARINGS.—

24 (A) IN GENERAL.—The duty of the Panel
 25 shall be to carry out, for each calendar year,

public hearings concerning the operation of the three prisons with the highest incidence of prison rape and the two prisons with the lowest incidence of prison rape in each category of facilities identified under subsection (c)(4). The Panel shall hold a separate hearing regarding the three Federal or State prisons with the highest incidence of prison rape. The purpose of these hearings shall be to collect evidence to aid in the identification of common characteristics of both victims and perpetrators of prison rape, and the identification of common characteristics of prisons and prison systems with a high incidence of prison rape, and the identification of common characteristics of prisons and prison systems that appear to have been successful in deterring prison rape.

(B) TESTIMONY AT HEARINGS.—

(i) PUBLIC OFFICIALS.—In carrying out the hearings required under subparagraph (A), the Panel shall request the public testimony of Federal, State, and local officials (and organizations that represent such officials), including the warden or director of each prison, who bears responsi-

1 bility for the prevention, detection, and
2 punishment of prison rape at each entity,
3 and the head of the prison system encom-
4 passing such prison.

5 (ii) VICTIMS.—The Panel may request
6 the testimony of prison rape victims, orga-
7 nizations representing such victims, and
8 other appropriate individuals and organiza-
9 tions.

10 (C) SUBPOENAS.—

11 (i) ISSUANCE.—The Panel may issue
12 subpoenas for the attendance of witnesses
13 and the production of written or other
14 matter.

15 (ii) ENFORCEMENT.—In the case of
16 contumacy or refusal to obey a subpoena,
17 the Attorney General may in a Federal
18 court of appropriate jurisdiction obtain an
19 appropriate order to enforce the subpoena.

20 (c) REPORTS.—

21 (1) IN GENERAL.—Not later than June 30 of
22 each year, the Attorney General shall submit a re-
23 port on the activities of the Bureau and the Review
24 Panel, with respect to prison rape, for the preceding
25 calendar year to—

1 (A) Congress; and

2 (B) the Secretary of Health and Human
3 Services.

4 (2) CONTENTS.—The report required under
5 paragraph (1) shall include—

6 (A) with respect to the effects of prison
7 rape, statistical, sociological, and psychological
8 data;

9 (B) with respect to the incidence of prison
10 rape—

11 (i) statistical data aggregated at the
12 Federal, State, prison system, and prison
13 levels;

14 (ii) a listing of those institutions in
15 the representative sample, separated into
16 each category identified under subsection
17 (c)(4) and ranked according to the inci-
18 dence of prison rape in each institution;
19 and

20 (iii) an identification of those institu-
21 tions in the representative sample that ap-
22 pear to have been successful in deterring
23 prison rape; and

1 (C) a listing of any prisons in the rep-
2 resentative sample that did not cooperate with
3 the survey conducted pursuant to section 4.

4 (3) DATA ADJUSTMENTS.—In preparing the in-
5 formation specified in paragraph (2), the Attorney
6 General shall use established statistical methods to
7 adjust the data as necessary to account for dif-
8 ferences among institutions in the representative
9 sample, which are not related to the detection, pre-
10 vention, reduction and punishment of prison rape, or
11 which are outside the control of the of the State,
12 prison, or prison system, in order to provide an ac-
13 curate comparison among prisons. Such differences
14 may include the mission, security level, size, and ju-
15 risdiction under which the prison operates. For each
16 such adjustment made, the Attorney General shall
17 identify and explain such adjustment in the report.

18 (4) CATEGORIZATION OF PRISONS.—The report
19 shall divide the prisons surveyed into three cat-
20 egories. One category shall be composed of all Fed-
21 eral and State prisons. The other two categories
22 shall be defined by the Attorney General in order to
23 compare similar institutions.

24 (d) CONTRACTS AND GRANTS.—In carrying out its
25 duties under this section, the Attorney General may—

1 (1) provide grants for research through the Na-
2 tional Institute of Justice; and

3 (2) contract with or provide grants to any other
4 entity the Attorney General deems appropriate.

5 (e) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated \$15,000,000 for each
7 of fiscal years 2004 through 2010 to carry out this sec-
8 tion.

9 **SEC. 5. PRISON RAPE PREVENTION AND PROSECUTION.**

10 (a) INFORMATION AND ASSISTANCE.—

11 (1) NATIONAL CLEARINGHOUSE.—There is es-
12 tablished within the National Institute of Correc-
13 tions a national clearinghouse for the provision of in-
14 formation and assistance to Federal, State, and local
15 authorities responsible for the prevention, investiga-
16 tion, and punishment of instances of prison rape.

17 (2) TRAINING AND EDUCATION.—The National
18 Institute of Corrections shall conduct periodic train-
19 ing and education programs for Federal, State, and
20 local authorities responsible for the prevention, in-
21 vestigation, and punishment of instances of prison
22 rape.

23 (b) REPORTS.—

24 (1) IN GENERAL.—Not later than September
25 30 of each year, the National Institute of Correc-

(2) CONTENTS.—The report required under paragraph (1) shall summarize the activities of the Department of Justice regarding prison rape abatement for the preceding calendar year.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated \$5,000,000 for each of
11 fiscal years 2004 through 2010 to carry out this section.

(a) GRANTS AUTHORIZED.—From amounts made available for grants under this section, the Attorney General shall make grants to States to assist those States in ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape) and to safeguard the communities to which inmates return. The purpose of grants under this section shall be to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape.

1 (b) USE OF GRANT AMOUNTS.—Amounts received by
 2 a grantee under this section may be used by the grantee,
 3 directly or through subgrants, only for one or more of the
 4 following activities:

5 (1) PROTECTING INMATES.—Protecting inmates
 6 by—

7 (A) undertaking efforts to more effectively
 8 prevent prison rape;

9 (B) investigating incidents of prison rape;
 10 or

11 (C) prosecuting incidents of prison rape.

12 (2) SAFEGUARDING COMMUNITIES.—Safe-
 13 guarding communities by—

14 (A) making available, to officials of State
 15 and local governments who are considering re-
 16 ductions to prison budgets, training and tech-
 17 nical assistance in successful methods for mod-
 18 erating the growth of prison populations with-
 19 out compromising public safety, including suc-
 20 cessful methods used by other jurisdictions;

21 (B) developing and utilizing analyses of
 22 prison populations and risk assessment instru-
 23 ments that will improve State and local govern-
 24 ments' understanding of risks to the community

1 regarding release of inmates in the prison popu-
 2 lation;

3 (C) preparing maps demonstrating the
 4 concentration, on a community-by-community
 5 basis, of inmates who have been released, to fa-
 6 cilitate the efficient and effective—

7 (i) deployment of law enforcement re-
 8 sources (including probation and parole re-
 9 sources); and

10 (ii) delivery of services (such as job
 11 training and substance abuse treatment) to
 12 those released inmates;

13 (D) promoting collaborative efforts, among
 14 officials of State and local governments and
 15 leaders of appropriate communities, to under-
 16 stand and address the effects on a community
 17 of the presence of a disproportionate number of
 18 released inmates in that community; or

19 (E) developing policies and programs that
 20 reduce spending on prisons by effectively reduc-
 21 ing rates of parole and probation revocation
 22 without compromising public safety.

23 (c) GRANT REQUIREMENTS.—

24 (1) PERIOD.—A grant under this section shall
 25 be made for a period of not more than 2 years.

1 (2) MAXIMUM.—The amount of a grant under
2 this section may not exceed \$1,000,000.

3 (3) MATCHING.—The Federal share of a grant
4 under this section may not exceed 50 percent of the
5 total costs of the project described in the application
6 submitted under subsection (d) for the fiscal year
7 for which the grant was made under this section.

8 (d) APPLICATIONS.—

9 (1) IN GENERAL.—To request a grant under
10 this section, the chief executive of a State shall sub-
11 mit an application to the Attorney General at such
12 time, in such manner, and accompanied by such in-
13 formation as the Attorney General may require.

14 (2) CONTENTS.—Each application required by
15 paragraph (1) shall—

16 (A) include the certification of the chief ex-
17 ecutive that the State receiving such grant—

18 (i) has adopted all national prison
19 rape standards that, as of the date on
20 which the application was submitted, have
21 been promulgated under this Act; and

22 (ii) will consider adopting all national
23 prison rape standards that are promul-
24 gated under this Act after such date;

(B) specify with particularity the preventative, prosecutorial, or administrative activities to be undertaken by the State with the amounts received under the grant; and

(C) in the case of an application for a grant for one or more activities specified in paragraph (2) of subsection (b)—

(i) review the extent of the budgetary circumstances affecting the State generally and describe how those circumstances relate to the State's prisons;

(ii) describe the rate of growth of the State's prison population over the preceding 10 years and explain why the State may have difficulty sustaining that rate of growth; and

(iii) explain the extent to which officials (including law enforcement officials) of State and local governments and victims of crime will be consulted regarding decisions whether, or how, to moderate the growth of the State's prison population.

(e) REPORTS BY GRANTEE.—

(1) IN GENERAL.—The Attorney General shall require each grantee to submit, not later than 90

1 days after the end of the period for which the grant
 2 was made under this section, a report on the activi-
 3 ties carried out under the grant. The report shall
 4 identify and describe those activities and shall con-
 5 tain an evaluation of the effect of those activities
 6 on—

7 (A) the number of incidents of prison rape,
 8 and the grantee’s response to such incidents;
 9 and

10 (B) the safety of the prisons, and the safe-
 11 ty of the communities in which released inmates
 12 are present.

13 (2) DISSEMINATION.—The Attorney General shall
 14 ensure that each report submitted under paragraph (1)
 15 is made available under the national clearinghouse estab-
 16 lished under section 5.

17 (f) STATE DEFINED.—In this section, the term
 18 “State” includes the District of Columbia, the Common-
 19 wealth of Puerto Rico, and any other territory or posses-
 20 sion of the United States.

21 (g) AUTHORIZATION OF APPROPRIATIONS.—

22 (1) IN GENERAL.—There are authorized to be
 23 appropriated for grants under this section
 24 \$40,000,000 for each of fiscal years 2004 through
 25 2010.

1 (2) LIMITATION.—Of amounts made available
 2 for grants under this section, not less than 50 per-
 3 cent shall be available only for activities specified in
 4 paragraph (1) of subsection (b).

5 **SEC. 7. NATIONAL PRISON RAPE REDUCTION COMMISSION.**

6 (a) ESTABLISHMENT.—There is established a com-
 7 mission to be known as the National Prison Rape Reduc-
 8 tion Commission (in this section referred to as the “Com-
 9 mission”).

10 (b) MEMBERS.—

11 (1) IN GENERAL.—The Commission shall be
 12 composed of 9 members, of whom—

13 (A) 3 shall be appointed by the President;

14 (B) 2 shall be appointed by the Speaker of
 15 the House of Representatives, unless the Speak-
 16 er is of the same party as the President, in
 17 which case 1 shall be appointed by the Speaker
 18 of the House of Representatives and 1 shall be
 19 appointed by the minority leader of the House
 20 of Representatives;

21 (C) 1 shall be appointed by the minority
 22 leader of the House of Representatives (in addi-
 23 tion to any appointment made under subpara-
 24 graph (B));

1 (D) 2 shall be appointed by the majority
 2 leader of the Senate, unless the majority leader
 3 is of the same party as the President, in which
 4 case 1 shall be appointed by the majority leader
 5 of the Senate and 1 shall be appointed by the
 6 minority leader of the Senate; and

7 (E) 1 member appointed by the minority
 8 leader of the Senate (in addition to any ap-
 9 pointment made under subparagraph (D)).

10 (2) PERSONS ELIGIBLE.—Each member of the
 11 Commission shall be an individual who has knowl-
 12 edge or expertise in matters to be studied by the
 13 Commission.

14 (3) CONSULTATION REQUIRED.—The President,
 15 the Speaker and minority leader of the House of
 16 Representatives, and the majority leader and minor-
 17 ity leader of the Senate shall consult with one an-
 18 other prior to the appointment of the members of
 19 the Commission to achieve, to the maximum extent
 20 possible, fair and equitable representation of various
 21 points of view with respect to the matters to be
 22 studied by the Commission.

23 (4) TERM.—Each member shall be appointed
 24 for the life of the Commission.

1 (5) TIME FOR INITIAL APPOINTMENTS.—The
 2 appointment of the members shall be made not later
 3 than 60 days after the date of enactment of this
 4 Act.

5 (6) VACANCIES.—A vacancy in the Commission
 6 shall be filled in the manner in which the original
 7 appointment was made, and shall be made not later
 8 than 60 days after the date on which the vacancy
 9 occurred.

10 (c) OPERATION.—

11 (1) CHAIRPERSON.—Not later than 15 days
 12 after appointments of all the members are made, the
 13 President shall appoint a chairperson for the Com-
 14 mission from among its members.

15 (2) MEETINGS.—The Commission shall meet at
 16 the call of the chairperson. The initial meeting of the
 17 Commission shall take place not later than 30 days
 18 after the initial appointment of the members is com-
 19 pleted.

20 (3) QUORUM.—A majority of the members of
 21 the Commission shall constitute a quorum to con-
 22 duct business, but the Commission may establish a
 23 lesser quorum for conducting hearings scheduled by
 24 the Commission.

1 (4) RULES.—The Commission may establish by
 2 majority vote any other rules for the conduct of
 3 Commission business, if such rules are not incon-
 4 sistent with this Act or other applicable law.

5 (d) COMPREHENSIVE STUDY OF THE IMPACTS OF
 6 PRISON RAPE.—

7 (1) IN GENERAL.—The Commission shall carry
 8 out a comprehensive legal and factual study of the
 9 penalogical, physical, mental, medical, social, and
 10 economic impacts of prison rape in the United
 11 States on—

12 (A) Federal, State, and local governments;
 13 and

14 (B) communities and social institutions
 15 generally, including individuals, families, and
 16 businesses within such communities and social
 17 institutions.

18 (2) MATTERS INCLUDED.—The study under
 19 paragraph (1) shall include—

20 (A) a review of existing Federal, State,
 21 and local government policies and practices with
 22 respect to the prevention, detection, and punish-
 23 ment of prison rape;

24 (B) an assessment of the relationship be-
 25 tween prison rape and prison conditions, and of

1 existing monitoring, regulatory, and enforce-
2 ment practices that are intended to address any
3 such relationship;

4 (C) an assessment of pathological or social
5 causes of prison rape;

6 (D) an assessment of the extent to which
7 the incidence of prison rape contributes to the
8 spread of sexually transmitted diseases and to
9 the transmission of HIV;

10 (E) an assessment of the characteristics of
11 inmates most likely to commit prison rape and
12 the effectiveness of various types of treatment
13 or programs to reduce such likelihood;

14 (F) an assessment of the characteristics of
15 inmates most likely to be victims of prison rape
16 and the effectiveness of various types of treat-
17 ment or programs to reduce such likelihood;

18 (G) an assessment of the impacts of prison
19 rape on individuals, families, social institutions
20 and the economy generally, including an assess-
21 ment of the extent to which the incidence of
22 prison rape contributes to recidivism and to in-
23 creased incidence of sexual assault;

24 (H) an examination of the feasibility and
25 cost of conducting surveillance, undercover ac-

1 activities, or both, to reduce the incidence of pris-
 2 on rape;

3 (I) an assessment of the safety and secu-
 4 rity of prison facilities and the relationship of
 5 prison facility construction and design to the in-
 6 cidence of prison rape;

7 (J) an assessment of the feasibility and
 8 cost of any particular proposals for prison re-
 9 form;

10 (K) an identification of the need for addi-
 11 tional scientific and social science research on
 12 the prevalence of prison rape in Federal, State,
 13 and local prisons;

14 (L) an assessment of the general relation-
 15 ship between prison rape and prison violence;

16 (M) an assessment of the relationship be-
 17 tween prison rape and levels of training, super-
 18 vision, and discipline of prison staff; and

19 (N) an assessment of existing Federal and
 20 State systems for reporting incidents of prison
 21 rape, including an assessment of whether exist-
 22 ing systems provide an adequate assurance of
 23 confidentiality, impartiality and the absence of
 24 reprisal.

25 (3) REPORT.—

(A) DISTRIBUTION.—Not later than 2 years after the date of the initial meeting of the Commission, the Commission shall submit a report on the study carried out under this subsection to—

- (i) the President;
- (ii) the Congress;
- (iii) the Attorney General;
- (iv) the Secretary of Health and Human Services;
- (v) the Director of the Federal Bureau of Prisons;
- (vi) the chief executive of each State; and
- (vii) the head of the department of corrections of each State.

(B) CONTENTS.—The report under subparagraph (A) shall include—

- (i) the findings and conclusions of the Commission;
- (ii) recommended national standards for reducing prison rape;
- (iii) recommended protocols for preserving evidence and treating victims of prison rape; and

1 (iv) a summary of the materials relied
2 on by the Commission in the preparation
3 of the report.

4 (e) RECOMMENDATIONS.—

5 (1) IN GENERAL.—In conjunction with the re-
6 port submitted under subsection (d)(3), the Commis-
7 sion shall provide the Attorney General and the Sec-
8 retary of Health and Human Services with rec-
9 ommended national standards for enhancing the de-
10 tection, prevention, reduction, and punishment of
11 prison rape.

12 (2) MATTERS INCLUDED.—The information
13 provided under paragraph (1) shall include rec-
14 ommended national standards relating to—

15 (A) the classification and assignment of
16 prisoners, using proven standardized instru-
17 ments and protocols, in a manner that limits
18 the occurrence of prison rape;

19 (B) the investigation and resolution of rape
20 complaints by responsible prison authorities,
21 local and State police, and Federal and State
22 prosecution authorities;

23 (C) the preservation of physical and testi-
24 monial evidence for use in an investigation of
25 the circumstances relating to the rape;

1 (D) acute-term trauma care for rape vic-
2 tims, including standards relating to—

3 (i) the manner and extent of physical
4 examination and treatment to be provided
5 to any rape victim; and

6 (ii) the manner and extent of any psy-
7 chological examination, psychiatric care,
8 medication, and mental health counseling
9 to be provided to any rape victim;

10 (E) referrals for long-term continuity of
11 care for rape victims;

12 (F) educational and medical testing meas-
13 ures for reducing the incidence of HIV trans-
14 mission due to prison rape;

15 (G) post-rape prophylactic medical meas-
16 ures for reducing the incidence of transmission
17 of sexual diseases;

18 (H) the training of correctional staff suffi-
19 cient to ensure that they understand and appre-
20 ciate the significance of prison rape and the ne-
21 cessity of its eradication;

22 (I) the timely and comprehensive investiga-
23 tion of staff sexual misconduct involving rape or
24 other sexual assault on inmates;

1 (J) ensuring the confidentiality of prison
 2 rape complaints and protecting inmates who
 3 make complaints of prison rape;

4 (K) creating a system for reporting inci-
 5 dents of prison rape that will ensure the con-
 6 fidentiality of prison rape complaints, protect
 7 inmates who make prison rape complaints from
 8 retaliation, and assure the impartial resolution
 9 of prison rape complaints;

10 (L) data collection and reporting of—

11 (i) prison rape;

12 (ii) prison staff sexual misconduct;

13 and

14 (iii) the resolution of prison rape com-
 15 plaints by prison officials and Federal,
 16 State, and local investigation and prosecu-
 17 tion authorities; and

18 (M) such other matters as may reasonably
 19 be related to the detection, prevention, reduc-
 20 tion, and punishment of prison rape.

21 (3) LIMITATION.—The Commission shall not
 22 propose a recommended standard that would impose
 23 substantial additional costs compared to the costs
 24 presently expended by Federal, State, and local pris-
 25 on authorities.

1 (f) CONSULTATION WITH ACCREDITATION ORGANI-
2 ZATIONS.—In developing recommended national standards
3 for enhancing the detection, prevention, reduction, and
4 punishment of prison rape, the Commission shall consider
5 any standards that have already been developed, or are
6 being developed simultaneously to the deliberations of the
7 Commission. The Commission shall consult with accredita-
8 tion organizations responsible for the accreditation of Fed-
9 eral, State, local or private prisons, that have developed
10 or are currently developing standards related to prison
11 rape. The Commission will also consult with national asso-
12 ciations representing the corrections profession that have
13 developed or are currently developing standards related to
14 prison rape.

15 (g) HEARINGS.—

16 (1) IN GENERAL.—The Commission shall hold
17 public hearings. The Commission may hold such
18 hearings, sit and act at such times and places, take
19 such testimony, and receive such evidence as the
20 Commission considers advisable to carry out its du-
21 ties under this section.

22 (2) WITNESS EXPENSES.—Witnesses requested
23 to appear before the Commission shall be paid the
24 same fees as are paid to witnesses under section
25 1821 of title 28, United State Code. The per diem

1 and mileage allowances for witnesses shall be paid
2 from funds appropriated to the Commission.

3 (h) INFORMATION FROM FEDERAL OR STATE AGEN-
4 CIES.—The Commission may secure directly from any
5 Federal department or agency such information as the
6 Commission considers necessary to carry out its duties
7 under this section. The Commission may request the head
8 of any State or local department or agency to furnish such
9 information to the Commission.

10 (i) PERSONNEL MATTERS.—

11 (1) TRAVEL EXPENSES.—The members of the
12 Commission shall be allowed travel expenses, includ-
13 ing per diem in lieu of subsistence, at rates author-
14 ized for employees of agencies under subchapter I of
15 chapter 57 of title 5, United States Code, while
16 away from their homes or regular places of business
17 in the performance of service for the Commission.

18 (2) DETAIL OF FEDERAL EMPLOYEES.—With
19 the affirmative vote of $\frac{2}{3}$ of the Commission, any
20 Federal Government employee, with the approval of
21 the head of the appropriate Federal agency, may be
22 detailed to the Commission without reimbursement,
23 and such detail shall be without interruption or loss
24 of civil service status, benefits, or privileges.

1 (3) PROCUREMENT OF TEMPORARY AND INTER-
2 MITTENT SERVICES.—Upon the request of the Com-
3 mission, the Attorney General shall provide reason-
4 able and appropriate office space, supplies, and ad-
5 ministrative assistance.

6 (j) CONTRACTS FOR RESEARCH.—

7 (1) NATIONAL INSTITUTE OF JUSTICE.—With a
8 $\frac{2}{3}$ affirmative vote, the Commission may select non-
9 governmental researchers and experts to assist the
10 Commission in carrying out its duties under this
11 Act. The National Institute of Justice shall contract
12 with the researchers and experts selected by the
13 Commission to provide funding in exchange for their
14 services.

15 (2) OTHER ORGANIZATIONS.—Nothing in this
16 subsection shall be construed to limit the ability of
17 the Commission to enter into contracts with other
18 entities or organizations for research necessary to
19 carry out the duties of the Commission under this
20 section.

21 (k) SUBPOENAS.—

22 (1) ISSUANCE.—The Commission may issue
23 subpoenas for the attendance of witnesses and the
24 production of written or other matter.

1 (2) ENFORCEMENT.—In the case of contumacy
 2 or refusal to obey a subpoena, the Attorney General
 3 may in a Federal court of appropriate jurisdiction
 4 obtain an appropriate order to enforce the subpoena.

5 (3) CONFIDENTIALITY OF DOCUMENTARY EVI-
 6 DENCE.—Documents provided to the Commission
 7 pursuant to a subpoena issued under this subsection
 8 shall not be released publicly without the affirmative
 9 vote of $\frac{2}{3}$ of the Commission.

10 (l) AUTHORIZATION OF APPROPRIATIONS.—There
 11 are authorized to be appropriated such sums as may be
 12 necessary to carry out this section.

13 (m) TERMINATION.—The Commission shall termi-
 14 nate on the date that is 60 days after the date on which
 15 the Commission submits the reports required by this sec-
 16 tion.

17 (n) EXEMPTION.—The Commission shall be exempt
 18 from the Federal Advisory Committee Act.

19 **SEC. 8. ADOPTION AND EFFECT OF NATIONAL STANDARDS.**

20 (a) PUBLICATION OF PROPOSED STANDARDS.—

21 (1) FINAL RULE.—Not later than 1 year after
 22 receiving the report specified in section 7(d)(3), the
 23 Attorney General shall publish a final rule adopting
 24 national standards for the detection, prevention, re-
 25 duction, and punishment of prison rape.

1 (2) INDEPENDENT JUDGMENT.—The standards
 2 referred to in paragraph (1) shall be based upon the
 3 independent judgment of the Attorney General, after
 4 giving due consideration to the recommended na-
 5 tional standards provided by the Commission under
 6 section 7(e), and being informed by such data, opin-
 7 ions, and proposals that the Attorney General deter-
 8 mines to be appropriate to consider.

9 (3) LIMITATION.—The Attorney General shall
 10 not establish a national standard under this section
 11 that would impose substantial additional costs com-
 12 pared to the costs presently expended by Federal,
 13 State, and local prison authorities. The Attorney
 14 General may, however, provide a list of improve-
 15 ments for consideration by correctional facilities.

16 (4) TRANSMISSION TO STATES.—Within 90
 17 days of publishing the final rule under paragraph
 18 (1), the Attorney General shall transmit the national
 19 standards adopted under such paragraph to the
 20 chief executive of each State, the head of the depart-
 21 ment of corrections of each State, and to the appro-
 22 priate authorities in those units of local government
 23 who oversee operation in one or more prisons.

24 (b) APPLICABILITY TO FEDERAL BUREAU OF PRIS-
 25 ONS.—The national standards referred to in subsection

1 (a) shall apply to the Federal Bureau of Prisons imme-
 2 diately upon adoption of the final rule under subsection
 3 (a)(4).

4 (c) ELIGIBILITY FOR FEDERAL FUNDS.—

5 (1) COVERED PROGRAMS.—

6 (A) IN GENERAL.—For purposes of this
 7 subsection, a grant program is covered by this
 8 subsection if, and only if—

9 (i) the program is carried out by or
 10 under the authority of the Attorney Gen-
 11 eral; and

12 (ii) the program may provide amounts
 13 to States for prison purposes.

14 (B) LIST.—For each fiscal year, the Attor-
 15 ney General shall prepare a list identifying each
 16 program that meets the criteria of subpara-
 17 graph (A) and provide that list to each State.

18 (2) ADOPTION OF NATIONAL STANDARDS.—For
 19 each fiscal year, any amount that a State would oth-
 20 erwise receive for prison purposes for that fiscal year
 21 under a grant program covered by this subsection
 22 shall be reduced by 5 percent, unless the chief execu-
 23 tive of the State submits to the Attorney General—

1 (A) a certification that the State has
 2 adopted, and is in full compliance with, the na-
 3 tional standards described in section 8(a); or

4 (B) an assurance that not less than 5 per-
 5 cent of such amount shall be used only for the
 6 purpose of enabling the State to adopt, and
 7 achieve full compliance with, those national
 8 standards, so as to ensure that a certification
 9 under subparagraph (A) may be submitted in
 10 future years.

11 (3) REPORT ON NONCOMPLIANCE.—Not later
 12 than September 30 of each year, the Attorney Gen-
 13 eral shall publish a report listing each grantee that
 14 is not in compliance with the national standards
 15 adopted pursuant to section 8(a).

16 (4) COOPERATION WITH SURVEY.—For each
 17 fiscal year, any amount that a State receives for
 18 that fiscal year under a grant program covered by
 19 this subsection shall not be used for prison purposes
 20 (and shall be returned to the grant program if no
 21 other authorized use is available), unless the chief
 22 executive of the State submits to the Attorney Gen-
 23 eral a certification that neither the State, nor any
 24 political subdivision or unit of local government

1 within the State, is listed in a report issued by the
 2 Attorney General pursuant to section 4(c)(2)(C).

3 (5) REDISTRIBUTION OF AMOUNTS.—Amounts
 4 under a grant program not granted by reason of a
 5 reduction under paragraph (2), or returned by rea-
 6 son of the prohibition in paragraph (4), shall be
 7 granted to one or more entities not subject to such
 8 reduction or such prohibition, subject to the other
 9 laws governing that program.

10 (6) IMPLEMENTATION.—The Attorney General
 11 shall establish procedures to implement this sub-
 12 section, including procedures for effectively applying
 13 this subsection to discretionary grant programs.

14 (7) EFFECTIVE DATE.—

15 (A) REQUIREMENT OF ADOPTION OF
 16 STANDARDS.—The first grants to which para-
 17 graph (2) applies are grants for the second fis-
 18 cal year beginning after the date on which the
 19 national standards under section 8(a) are final-
 20 ized.

21 (B) REQUIREMENT FOR COOPERATION.—
 22 The first grants to which paragraph (4) applies
 23 are grants for the fiscal year beginning after
 24 the date of the enactment of this Act.

1 **SEC. 9. REQUIREMENT THAT ACCREDITATION ORGANIZA-**
2 **TIONS ADOPT ACCREDITATION STANDARDS.**

3 (a) **ELIGIBILITY FOR FEDERAL GRANTS.**—Notwith-
4 standing any other provision of law, an organization re-
5 sponsible for the accreditation of Federal, State, local, or
6 private prisons, jails, or other penal facilities may not re-
7 ceive any new Federal grants during any period in which
8 such organization fails to meet any of the requirements
9 of subsection (b).

10 (b) **REQUIREMENTS.**—To be eligible to receive Fed-
11 eral grants, an accreditation organization referred to in
12 subsection (a) must meet the following requirements:

13 (1) At all times after 90 days after the date of
14 enactment of this Act, the organization shall have in
15 effect, for each facility that it is responsible for ac-
16 crediting, accreditation standards for the detection,
17 prevention, reduction, and punishment of prison
18 rape.

19 (2) At all times after 1 year after the date of
20 the adoption of the final rule under section 8(a)(4),
21 the organization shall, in addition to any other such
22 standards that it may promulgate relevant to the de-
23 tection, prevention, reduction, and punishment of
24 prison rape, adopt accreditation standards consistent
25 with the national standards adopted pursuant to
26 such final rule.

1 **SEC. 10. DEFINITIONS.**

2 In this Act, the following definitions shall apply:

3 (1) CARNAL KNOWLEDGE.—The term “carnal
4 knowledge” means contact between the penis and
5 the vulva or the penis and the anus, including pene-
6 tration of any sort, however slight.

7 (2) INMATE.—The term “inmate” means any
8 person incarcerated or detained in any facility who
9 is accused of, convicted of, sentenced for, or adju-
10 dicated delinquent for, violations of criminal law or
11 the terms and conditions of parole, probation, pre-
12 trial release, or diversionary program.

13 (3) JAIL.—The term “jail” means a confine-
14 ment facility of a Federal, State, or local law en-
15 forcement agency to hold—

16 (A) persons pending adjudication of crimi-
17 nal charges; or

18 (B) persons committed to confinement
19 after adjudication of criminal charges for sen-
20 tences of 1 year or less.

21 (4) HIV.—The term “HIV” means the human
22 immunodeficiency virus.

23 (5) ORAL SODOMY.—The term “oral sodomy”
24 means contact between the mouth and the penis, the
25 mouth and the vulva, or the mouth and the anus.

1 (6) POLICE LOCKUP.—The term “police lock-
2 up” means a temporary holding facility of a Federal,
3 State, or local law enforcement agency to hold—

4 (A) inmates pending bail or transport to
5 jail;

6 (B) inebriates until ready for release; or

7 (C) juveniles pending parental custody or
8 shelter placement.

9 (7) PRISON.—The term “prison” means any
10 confinement facility of a Federal, State, or local gov-
11 ernment, whether administered by such government
12 or by a private organization on behalf of such gov-
13 ernment, and includes—

14 (A) any local jail or police lockup; and

15 (B) any juvenile facility used for the cus-
16 tody or care of juvenile inmates.

17 (8) PRISON RAPE.—The term “prison rape” in-
18 cludes the rape of an inmate in the actual or con-
19 structive control of prison officials.

20 (9) RAPE.—The term “rape” means—

21 (A) the carnal knowledge, oral sodomy,
22 sexual assault with an object, or sexual fondling
23 of a person, forcibly or against that person’s
24 will;

1 (B) the carnal knowledge, oral sodomy,
 2 sexual assault with an object, or sexual fondling
 3 of a person not forcibly or against the person's
 4 will, where the victim is incapable of giving con-
 5 sent because of his or her youth or his or her
 6 temporary or permanent mental or physical in-
 7 capacity; or

8 (C) the carnal knowledge, oral sodomy,
 9 sexual assault with an object, or sexual fondling
 10 of a person achieved through the exploitation of
 11 the fear or threat of physical violence or bodily
 12 injury.

13 (10) SEXUAL ASSAULT WITH AN OBJECT.—The
 14 term “sexual assault with an object” means the use
 15 of any hand, finger, object, or other instrument to
 16 penetrate, however slightly, the genital or anal open-
 17 ing of the body of another person.

18 (11) SEXUAL FONDLING.—The term “sexual
 19 fondling” means the touching of the private body
 20 parts of another person (including the genitalia,
 21 anus, groin, breast, inner thigh, or buttocks) for the
 22 purpose of sexual gratification.

23 (12) EXCLUSIONS.—The terms and conditions
 24 described in paragraphs (9) and (10) shall not apply
 25 to—

1 (A) custodial or medical personnel gath-
2 ering physical evidence, or engaged in other le-
3 gitimate medical treatment, in the course of in-
4 vestigating prison rape;

5 (B) the use of a health care provider's
6 hands or fingers or the use of medical devices
7 in the course of appropriate medical treatment
8 unrelated to prison rape; or

9 (C) the use of a health care provider's
10 hands or fingers and the use of instruments to
11 perform body cavity searches in order to main-
12 tain security and safety within the prison or de-
13 tention facility, provided that the search is con-
14 ducted in a manner consistent with constitu-
15 tional requirements.

Passed the Senate July 21, 2003.

Attest:

Secretary.

108TH CONGRESS
1ST SESSION

S. 1435

AN ACT

To provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.